

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF CHIEF COUNSEL
JUNE 7, 2006**

ITEM 11

SUBJECT

PETITION OF CHEVRON PRODUCTS COMPANY (TECHNICAL REPORT ORDER FOR 4000 PORTOLA DRIVE, SANTA CRUZ), CENTRAL COAST REGION.
SWRCB/OCC FILE A-1343

DISCUSSION

On May 20, 2004, the State Water Resources Control Board (State Water Board) adopted Order No. WQO 2004-0005, a non-precedential order vacating a technical report order issued by the Central Coast Regional Water Quality Control Board (Central Coast Water Board) on November 9, 2000. The technical report order required Chevron Products Company (Chevron) to take investigative and other actions at a site on which Chevron previously operated a service station. Order No. WQO 2004-0005 concluded that evidence in the record did not support the requirements in the technical report order. After the State Water Board vacated the technical report order, Bob Rudolph Enterprises filed a petition for writ of administrative mandamus with the California Superior Court, County of Santa Cruz (Court).

On March 21, 2006, the Court issued an order granting petition for writ of administrative mandamus. The Court found that the Central Coast Water Board's technical report order is unclear as to actions required of Chevron and the statutory authority under which the Central Coast Water Board ordered those actions. The Court order directs the State Water Board to remand the matter to the Central Coast Water Board for clarification on these points. The draft order now under consideration would remand the matter in compliance with the Court order.

POLICY ISSUE

Should the State Water Board adopt the proposed order remanding the technical report order to the Central Coast Water Board?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

Central Coast Water Board

STAFF RECOMMENDATION

Adopt the draft order as proposed.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
ORDER WQ 2006-

In the Matter of the Petition of

CHEVRON PRODUCTS COMPANY

For Review of
Technical Report Order For
4000 Portola Drive, Santa Cruz
Issued by the
California Regional Water Quality Control Board,
Central Coast Region

SWRCB/OCC FILE A-1343

BY THE BOARD:

On March 21, 2006, the Superior Court for the County of Santa Cruz (Court) issued an order granting petition for writ of administrative mandamus in the matter of *Bob Rudolph Enterprises, Inc. v. State Water Resources Control Board*, Case No. CV 149342 (Attached). By order of the Court, State Water Resources Control Board (State Water Board) Order No. WQO 2004-0005 is hereby withdrawn. The matter of the petition of Chevron Products Company for review of a technical report order for 4000 Portola Drive, Santa Cruz is remanded to the California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board).

The Central Coast Water Board is directed to comply with the Court's order by revising its technical report order of November 9, 2000, specifically stating what actions are being ordered and stating the statutory authority to order each required action. By order of the Court, the Central Coast Water Board's revised order shall be based upon the record before it as of November 9, 2000.

This Order is not precedential.

ORDER

IT IS HEREBY ORDERED that WQO 2004-0005 is set aside for further proceedings consistent with this Order.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 7, 2006.

AYE:

NO:

ABSENT:

ABSTAIN:

DRAFT

Song Her
Clerk to the Board

R

1 GLYNN & FINLEY, LLP
2 PATRICK L. FINLEY, Bar No. 70827
3 ANDREW T. MORTL, Bar No. 177876
4 JEFFERY L. PODAWILTZ, Bar No. 191369
5 One Walnut Creek Center
100 Pringle Avenue, Suite 500
Walnut Creek, CA 94596
Telephone: (925) 210-2800
Facsimile: (925) 945-1975

FILED

MAR 23 2006

ALEXANDRO CLERK
BY [Signature]
DEPUTY SANTA CRUZ COUNTY

6 Attorneys for Real Party in Interest Chevron U.S.A., Inc.

7
8

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

*no
envelope
provided*

10
11
12
13
14
15
16
17

BOB RUDOLPH ENTERPRISES, INC.,
Petitioner,

vs.

STATE WATER RESOURCES CONTROL
BOARD, et al.,
Respondents.

Case No. CV 149342
FACSIMILE
ORDER GRANTING PETITION FOR
WRIT OF ADMINISTRATIVE
MANDAMUS

Hearing: February 1, 2006
Time: 8:30 a.m.

18
19
20
21
22
23
24
25
26
27
28

This matter came regularly before this court on February 1, 2006, for hearing in Department 5 of the Superior Court, the Honorable Samuel Stevens presiding. John Gallagher of Bosso Williams appeared on behalf of the petitioner. Anita E. Ruud, Deputy Attorney General, appeared on behalf of respondent State Water Resources Control Board, and Jeffery L. Podawiltz appeared on behalf of real party in interest Chevron U.S.A., Inc.

The record of the administrative proceedings having been received into evidence and examined by the court, judicial notice having been given to the materials submitted by the parties and no additional evidence having been received by the court, arguments having been

1 presented, the court made the following determinations:

2 1. The Court finds that the order of the Regional Water Quality Control Board,
3 Central Coast Region dated November 9, 2000 ("the Order") is unclear as to
4 whether the Order requires Chevron U.S.A., Inc. to conduct further investigation
5 at the site only, cleanup only, or both. Further, the referenced statutory authority
6 in the Order is not consistent with the language of the Order. Accordingly, the
7 Court finds that the Order requires clarification and directs State Water Resources
8 Control Board to set aside its Order of May 20, 2004 and remand the matter to the
9 Regional Water Quality Control Board, Central Coast Region, for clarification
10 and a revised Order based on the record before the Regional Board on November
11 9, 2000. The revised order from the Regional Board should indicate specifically
12 what is being ordered of the interested parties with reference to the statutory
13 authority for such an order.

14 2. Because of the ambiguities of the Regional Board's Order of November 9, 2000,
15 the decision of the State Water Resources Control Board of May 20, 2004 does
16 not adequately set forth the applicable law supporting its decision. Accordingly,
17 the State Water Resources Control Board is directed to review its May 20, 2004
18 decision in light of the revised order that the Regional Board has been directed to
19 issue (see above). The State Water Resources Control Board's revised order shall
20 be based on the record before it at the time the original order of May 20, 2004
21 was issued as supplemented only by the revised order issued by the Regional
22 Board as discussed above.

23 3. This Court shall retain jurisdiction for further review of this matter.

24 IT IS SO ORDERED that:

25 1. A peremptory writ of mandate shall issue commanding the State Water Resources
26 Control Board, and through it the Regional Water Quality Control Board, Central Coast Region,
27 to review and revise their respective orders as set forth herein.

28 ///

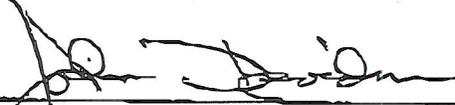
1 2. The issue of the parties' costs shall await the further review by this Court of the
2 revised Orders from the administrative agencies.

3
4 Date: March 21, 2006


5 Judge of the Superior Court
6 SAMUEL S. STEVENS

7 Approved as to form:

8 State of California, State Water Resources Control Board

9
10 By: 
11 John Davidson, Deputy Attorney General
12 Attorneys for the State Water Resources Control Board

13
14 Glynn & Finley, LLP

15
16 By: 
17 Jeffrey Podawiltz, Esq.
18 Attorneys for Chevron U.S.A., Inc.

19 Bosso, Williams, Sachs, Atack, Gallagher & Sanford

20
21 By: 
22 John M. Gallagher, Esq.
23 Attorneys for Bob Rudolph Enterprises, Inc.

24
25
26
27
28